

description must be stated in Commerce Control List (CCL) terms. If those terms are inadequate to meet the Bureau of Census requirements, the FTR requires that you give enough additional detail to permit verification of the Schedule B Number (or Harmonized Tariff Schedule of the United States (HTS) number). See 15 CFR Part 30, Appendix B, Part III of the FTR for license codes.

(1) *Exports under a license.* When exporting under the authority of a license, you must report on the EEI filing to the AES the license code that corresponds to the license, license number, the ECCN, and an item description identical to the item description on the license.

(2) *Exports under a license exception.* You must report on any required EEI filing to the AES the ECCN and the correct License Exception symbol (e.g., LVS, GBS, CIV) for the License Exception(s) and the license code/license exception code that corresponds to the license exception under which you are exporting. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are exempted from entering the ECCN. See also § 740.1(d) of the EAR.

(3) *No License Required (NLR) exports.* You must report on any required EEI filing to the AES the correct license code/license exception code when using the “NLR” designation for the items that are subject to the EAR but not listed on the Commerce Control List (CCL) (i.e., items are designated as EAR99) (FTR license code “C33”), and when the items to be exported are listed on the CCL but are not subject to a license requirement. In addition, you must enter the correct ECCN on any required EEI filing for all items being exported under the NLR provisions that have a reason for control other than or in addition to anti-terrorism (AT).

(h) *Power of attorney or other written authorization.* In a “power of attorney” or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal.

(1) An agent must obtain a power of attorney or other written authorization in the following circumstances:

(i) An agent that represents a foreign principal party in interest in a routed transaction must obtain a power of attorney or other written authorization that sets forth his authority; and

(ii) An agent that applies for a license on behalf of a principal party in interest must obtain a power of attorney or other written authorization that sets forth the agent’s authority to apply for the license on behalf of the principal.

NOTE TO PARAGRAPH (h)(1): The Bureau of Census Foreign Trade Regulations impose additional requirements for a power of attorney or other written authorization. See 15 CFR 30.3(f) of the FTR.

(2) This requirement for a power of attorney or other written authorization is a legal requirement aimed at ensuring that the parties to a transaction negotiate and understand their responsibilities. The absence of a power of attorney or other written authorization does not prevent BIS from using other evidence to establish the existence of an agency relationship for purposes of imposing liability.

(i) *Filing the Electronic Export Information (EEI).* The EEI must be filed with the United States Government in the manner prescribed by the Bureau of Census Foreign Trade Regulations (15 CFR part 30).

[79 FR 4617, Jan. 29, 2014, as amended at 79 FR 32626, June 5, 2014; 79 FR 34221, June 16, 2014; 79 FR 48661, Aug. 18, 2014]

§ 758.2 Automated Export System (AES).

The Bureau of the Census’ Foreign Trade Regulations (FTR) (15 CFR Part 30) contain provisions for filing Electronic Export Information (EEI) using the Automated Export System (AES). In order to use AES, you must apply directly to the Bureau of the Census (Census Bureau) for certification and approval (see 15 CFR 30.5(a) of the FTR). Two electronic filing options (predeparture and postdeparture) are available for transmitting EEI. Predeparture filing requires that all information be reported in AES prior to export (15 CFR 30.4(a) and (b) of the FTR). Postdeparture filing is available

only for approved companies (approved by the Census Bureau, U.S. Customs and Border Protection, and BIS) and requires no information to be transmitted prior to export with complete information reported postdeparture no later than five (5) calendar days after the date of exportation (15 CFR 30.4(c) of the FTR).

(a) *Census Bureau's postdeparture application process.* Exporters, or agents applying on behalf of an exporter, may apply for postdeparture privileges by submitting a Letter of Intent to the Bureau of Census (Census Bureau) Census Bureau in accordance with 15 CFR 30.5(a) of the FTR. The Census Bureau will distribute the Letter of Intent to BIS and other agencies participating in the postdeparture approval process. Any agency may notify the Census Bureau that an applicant has failed to meet its acceptance standards, and the Census Bureau will provide a denial letter to the applicant naming the denying agency. If the Census Bureau receives neither notification of denial, nor a request for an extension from the agency within 30 days of the date of referral of the letter of intent to the agency, the applicant is deemed to be approved by that agency. (15 CFR 30.5(c) of the FTR).

(b) *BIS postdeparture evaluation criteria.* BIS will consider the grounds for denial of postdeparture filing status set forth in 15 CFR 30.5(c)(1) of the FTR, as well as the additional grounds for denial set forth in this paragraph.

(1) Applicants have not been approved for postdeparture filing privileges by the Census Bureau or other agency;

(2) Any party to the export transaction is contained on BIS's Denied Party, Entity Lists, [SDN], or Unverified List;

(3) Exports are destined to a country in Country Group E:1 (Supplement No.1 to Part 740 of the EAR);

(4) Exports are made under License Exception Strategic Trade Authorization (STA); are made under Authorization Validated End User (VEU); or are of 9x515 or "600 series" items.

(5) Exports containing items that require a BIS license or have an ECCN controlled for reasons other than Anti-Terrorism only or Encryption Items.

(c) *Contacts for assistance.* (1) For additional information on the AES in general, please contact the Foreign Trade Division, U.S. Census Bureau, (800) 549-0595, ext. 1.

(2) For information about BIS's postdeparture approval process for items subject to the EAR, contact: Director, Office of Technology Evaluation, Bureau of Industry and Security, (202) 482-4933, facsimile: (202) 482-5361.

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§ 758.3 Responsibilities of parties to the transaction.

All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, as long as the transaction complies with the EAR. However, acting through a forwarding or other agent, or delegating or redelegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.

(a) *Export transactions.* The U.S. principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.

(b) *Routed export transactions.* All provisions of the EAR, including the end-use and end-user controls found in part 744 of the EAR, and the General Prohibitions found in part 736 of the EAR, apply to routed export transactions. The U.S. principal party in interest is the exporter and must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization, *unless* the U.S. principal party in interest obtains from the foreign principal party in interest a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority, making the U.S. agent of the foreign principal